

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

Petition for Rulemaking and Request for Initiation)
of §403 Proceeding Into Character of WorldCom, Inc.)
and Other Commission Licensees)

RM-10613

To: Chief, Wireline Competition Bureau
Chief, Wireless Telecommunications Bureau
Chief, International Bureau

**Comments of The Office of Communication of the United Church of Christ, Inc.
In Support of Initiation of Proceeding
Into Character of WorldCom, Inc. and Other Licensees**

The Office of Communication of the United Church of Christ, Inc. ("UCC"), by counsel and in response to the Commission's Public Notice, Report No. 2585, released December 5, 2002, hereby submits its Comments supporting its Petition for Rulemaking and Request for Initiation of §403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees (the "Petition") pursuant to which UCC seeks the adoption of a Notice of Proposed Rulemaking and the initiation of a Section 403 inquiry regarding the establishment of new standards of conduct to be required of all telecommunications providers receiving authorizations to operate from the Commission.¹ The following is shown in support thereof:

As discussed in the Petition, the nation's telecommunications infrastructure serves as the hub for virtually all commerce, forms the foundation for much of our nation's public safety functions, and is a critical resource to our national defense. Reliable telecommunications facilities and services are essential to our personal and business lives and to the free flow of our

¹ The deadline for comments in this proceeding was extended to January 31, 2003. *In re Request for Initiation of Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees; Motion for Extension of Time, Order*, DA 02-3502, released December 19, 2002. Accordingly, UCC's Comments are timely submitted.

nation's economy. The Petition's description of the fraud and deceit engaged in by WorldCom, Inc. and its subsidiaries ("WorldCom") exemplified how one Commission regulatee's conduct can have far reaching effects not only on all aspects of the telecommunications industry, both nationally and internationally, but on the economy as a whole.

UCC's Petition fully demonstrated the need for the Commission to establish and enforce new rules including specific business conduct standards applicable to those who benefit from its authorizations. While the existing standards may provide the Commission with an opportunity to evaluate the character qualification of its regulatees, the existing standards are not preemptive and, as WorldCom fully demonstrates, have otherwise proven to be ineffective.

By the time the FCC reviews an applicant's FCC related and/or non-FCC related misconduct, the regulatee may have already knowingly made false statements to the FCC (and perhaps other government agencies), willfully or repeatedly failed to operate in compliance with its authorization(s), or have already been caught, tried and convicted for fraudulent statements to a governmental unit or convicted by a criminal court. In the case of WorldCom, the public, or shall we say the public interest, is left holding the bag. The Commission cannot adequately protect the public with its existing character standards.

Indeed, the level of fraud and deceit in which WorldCom was engaged was of such magnitude as to, in UCC's opinion, warrant the revocation of WorldCom's Commission authorizations and certifications. As a result, UCC submitted its Informal Objection to Assignment Applications ("Informal Objection") setting out in even greater detail WorldCom's fraud, misrepresentations and accounting irregularities.² To provide a vivid example of the type of behavior the Commission must preclude from the telecommunications sector, UCC

² The Commission denied the Informal Objection. See FCC Public Notice "Wireless Telecommunications Bureau Grants Applications for Assignment of Licenses to WorldCom, Inc. and Its Subsidiaries as Debtors In Possession," DA 02-3350, released December 5, 2002.

incorporates its Informal Objection into these Comments as if fully set forth herein. A copy of the Informal Objection is attached.

That WorldCom's misconduct harmed both competitors and consumers of telecommunications services is nearly universally accepted:

Not only did the economy suffer from devalued businesses and widespread layoffs, but several companies—most notably, WorldCom—appear to have resorted to financial deception to mask poor performance. This fraud compounded the downturn by shaking investors' confidence in the truthfulness of financial statements.³

Much of the great fiber build-out was based on a big miscalculation" owing to WorldCom.⁴

"WorldCom Inc.'s disclosure [that] it improperly accounted for \$3.8 billion in expenses has wreaked much havoc in the financial markets this week."⁵

As discussed in the Petition, WorldCom supplied false or fraudulent statements to the Commission containing information essential to the formulation of policies concerning telecommunications carriers and infrastructure. The supply of inaccurate or falsified data undermines the FCC's ability to rely on company-supplied data to establish and implement its regulatory objectives and can serve to mislead marketplace competitors.

The Commission and other governmental agencies use the information supplied by its regulatees to assess the condition of the market and establish regulatory policies:⁶

Regulatory accounting data and related information filed by telecommunications carriers is used by federal and state

³ Statement of Kathleen Q. Abernathy, Commissioner Federal Communications Commission, Before the Senate Committee on Commerce, Science, & Transportation (Jan. 14, 2003), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-230241A4.doc.

⁴ Joelle Tessler, *Telecom Companies Struggle with Glut of Fiber-Optic Networks*, KNIGHT-RIDDER TRIBUNE BUSINESS NEWS, April 13, 2002.

⁵ Ross Snel, *WorldCom's Pain May Eventually Prove AT&T's Gain*, DOW JONES NEWS SERVICE, June 28, 2002.

⁶ Non-government entities—including vendors, investors and competitors—use the information to monitor and evaluate the telecommunications industry and participants.

telecommunications policymakers to fulfill various responsibilities, such as determining interstate access charges, evaluating federal-state jurisdictional separations, setting rates for unbundled network elements and calculating universal service support....⁷

Additionally, the Commission uses carrier-supplied information for purposes of evaluating mergers or acquisitions,⁸ resolving carrier complaints,⁹ and managing numbering resources.¹⁰ It also relies on company self-reporting of data to establish and collect fees and contribution payments associated with its regulatory and support programs.¹¹ Carrier submission of inaccurate or false information negatively affects the Commission's ability to act on these responsibilities.

Likewise, the Commission publishes a number of reports containing and analyzing the information supplied by telecommunications entities.¹² These reports often serve as an official record regarding the status of the market. For example, the Commission's *Statistics of Communications Common Carriers* states:

The Statistics of Communications Common Carriers (SOCC), which has been published annually since 1939, is one of the most widely used

⁷ Press Statement of Michael K. Powell, Chairman, Federal Communications Commission, *Re: Federal-State Joint Conference on Regulating Accounting Issues*, Sept. 5, 2002, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-225969A1.doc (last visited Sept. 16, 2002)(emphasis in original).

⁸ See, e.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from; MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816 (2000); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160 (1999).

⁹ See, e.g., *AT&T Corp. v. Business Telecom, Inc., et al.*, Memorandum Opinion and Order, 16 FCC Rcd 12312 (2001).

¹⁰ See, e.g., *Numbering Resource Optimization*, Notice of Proposed Rulemaking, 14 FCC Rcd 10322 (1999).

¹¹ See, e.g., *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, 14 FCC Rcd 20156 (1999).

¹² These reports (and their latest release dates) include: *Statistics of Communications Common Carriers* (2001/2002 Edition); *Telecommunications Industry Revenues* (2002); *Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service* (July 2002); *Trends in Telephone Service* (May 2002); *Statistics of the Long Distance Telecommunications Industry* (January 2001); *Fiber Deployment Update – End of Year 1998* (1999); *International Telecommunications Data* (2000); *Trends in the International Telecommunications Industry* (April 2001).

reference works in the field of telecommunications. It is the only permanent record of common carrier activity published by the Government Printing Office and sent to repository libraries.

The supply of inaccurate or falsified data jeopardizes all these efforts since it clearly affects the accuracy of FCC reports and analyses relying on company data. Anything less than fully reliable information subverts virtually the entirety of the Commission's processes. Without truthful, complete and accurate information, the Commission cannot adopt policies reflecting market conditions. At this time, we still do not know the possible harm to the goal of universal service that may occur because of the underfunding of the universal service fund that may result from WorldCom's overreporting of revenues. The Commission cannot rely on the accuracy and veracity of its carriers' submissions without the adoption of the rules and standards of conduct proposed in the Petition.

In order to fully perform its functions in accordance with its statutory mandate, the Commission must be able to rely on the information provided to it. But the only way it can do that is with the knowledge that the information provider is being, and will continue to be, truthful with the Commission. Only through the establishment of clear and explicit standards – and clear and explicit consequences for violations thereof – can the Commission acquire such knowledge.

Not only should the Commission adopt the requested Notice of Proposed Rulemaking, but as discussed in the Petition, it should conduct a §403¹³ investigation regarding WorldCom's activities as well as other entities falling under its jurisdiction to fully gather facts and information upon which to base an empirical decision. "The decision to investigate, moreover, is not purely discretionary ... 'where, as in the instant case, the Commission has reason to believe a licensee may be violating the Act or its policies, rules and regulations, ... it has a

¹³ 47 U.S.C. § 403.

responsibility to inquire and determine whether, in fact, such activity is occurring.”¹⁴ UCC submits that the § 403 investigation is not only warranted in this instance, but nearly mandatory.

Given the glaring evidence of WorldCom’s wrongdoing, the Act, well-settled Commission policies, and public interest demands, the Commission should institute an inquiry pursuant to § 403 of the Act to fully explore the nature and extent of corruption and wrongdoing that was fostered by the WorldCom, Qwest and Global Crossing corporate cultures. UCC recognizes that other concurrent investigations are currently underway at the Securities and Exchange Commission and that WorldCom is currently a ward of the Bankruptcy Court.

The FCC has a unique obligation, distinct from the mandate of the bankruptcy court, the Department of Justice, and the Securities and Exchange Commission, to examine the effect of misconduct by its regulatees on the telecommunications industry. Neither the bankruptcy code nor the securities code is designed to eradicate anticompetitive business models or to establish policy for the telecommunications infrastructure. The FCC is uniquely empowered to defend the competitive process and the integrity of our nation’s vital telecommunications infrastructure.

The Bankruptcy Code provides legal processes by which a failed business is provided with an opportunity to reorganize its financial affairs, thereby allowing the business to continue for the benefit of its creditors.¹⁵ Apart from reorganization, the Bankruptcy Code also provides a framework for distribution if the plan contemplates liquidation.¹⁶ The main role of the Bankruptcy Court is that of fair and efficient administration of the Bankruptcy Code. The Bankruptcy Court aims to protect *creditors* in the face of a debtor’s bankruptcy. Hence, the vitality of our telecommunications resources plays no policy role before the Bankruptcy Courts.

¹⁴ *James A. Kay, Jr., Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area*, Memorandum Opinion and Order, 17 FCC Rcd 8554, 8556 (2002), citing *PTL of Heritage Village Church and Missionary Fellowship, Inc.*, 71 FCC 2d at 327.

¹⁵ *NIRB v. Greyhound Lines (In Re Engle Bus. Mfg.)*, 158 F.R. 421 (Dist. Ct. S.D. Tex. 1993).

¹⁶ *Century Glove, Inc. v. First American Bank of New York*, 860 F.2d 94, 102 (3d Cir. 1988).

Similarly, the Securities and Exchange Commission (SEC) is not charged with protecting the interests of telecommunications consumers and producers. The main role of the SEC is the protection of *investors* of securities and maintaining the integrity of the securities markets, through disclosure of important information and efficient administration of the Securities Act of 1933 and the Securities Exchange Act of 1934.¹⁷ The scope of the two Acts does not envisage extending protection to the services (non-securities) or labor market.

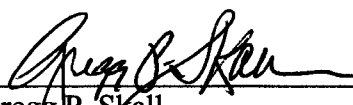
Only the Commission is qualified to establish policy for the telecommunications infrastructure.

Wherefore, the premises considered, Office of Communication of the United Church of Christ, Inc. respectfully requests that the Commission adopt and release a Notice of Proposed Rulemaking seeking comment on the establishment of new standards of conduct applicable to all telecommunications providers receiving authorizations from the Commission and that it initiate a Section 403 investigation to enable it to develop a more complete record.

Respectfully submitted,

**OFFICE OF COMMUNICATION OF THE
UNITED CHURCH OF CHRIST, INC.**

January 31, 2003

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¹⁷ Securities & Exchange Commission, The Investor's Advocate: How the SEC Protects Investors and Maintains Market Integrity, available at <http://www.sec.gov/about/whatwedo.shtml>.